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7                   **UNITED STATES DISTRICT COURT**  
8                   **DISTRICT OF NEVADA**  
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10 BRUCE WOLF,

11                 Plaintiff(s),

12 v.

13 CLARK COUNTY DEPARTMENT OF  
14 FAMILY SERVICES, et al.,

15                 Defendant(s).

Case No.: 2:17-cv-02084-JCM-NJK

**Order**

(Docket No. 90)

16         Pending before the Court is Defendants' motion for leave to file exhibits under seal, filed  
17 on an emergency basis. Docket No. 90.

18         As a preliminary matter, Defendants improperly filed their motion on an emergency basis.  
19 "The filing of emergency motions is disfavored because of the numerous problems they create for  
20 the opposing party and the court resolving them." *Cardoza v. Bloomin' Brands, Inc.*, 141 F. Supp.  
21 3d 1137, 1140 (D. Nev. 2015) (citing *In re Intermagnetics America, Inc.*, 101 B.R. 191, 193-194  
22 (C.D. Cal. 1989)). "Safeguards that have evolved over many decades are built into the Federal  
23 Rules of Civil Procedure and the Local Rules of this court." *Mission Power Eng'g Co. v.*  
24 *Continental Cas. Co.*, 883 F. Supp. 488, 491 (C.D. Cal. 1995). A request to bypass the default  
25 procedures through the filing of an emergency motion impedes the adversarial process, disrupts  
26 the schedules of the Court and opposing counsel, and creates an opportunity for bad faith  
27 gamesmanship. *Cardoza*, 141 F. Supp. 3d at 1140-41. As a result, the Court allows motions to  
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1 proceed on an emergency basis in only very limited circumstances. *See, e.g.*, Local Rule 7-4(b)  
2 (“Emergency motions should be rare”).

3 Emergency motions must as a threshold matter meet several technical requirements  
4 outlined in the local rules. *See, e.g.*, Local Rule 26-7(d) (emergency discovery motions must  
5 satisfy the requirements outlined in Local Rule 7-4). First, the face of the motion itself must be  
6 entitled an “Emergency Motion” so the Court has prompt notice that expedited relief is being  
7 requested. Local Rule 7-4(a). Second, the emergency motion must be accompanied by an affidavit  
8 providing several key facts necessary for the Court to determine whether, in fact, an emergency  
9 exists and allowing the Court to provide the fairest, most efficient resolution. *Id.* This affidavit  
10 must include a detailed description of the nature of the emergency. *See id.* The affidavit must also  
11 provide the contact information (telephone number and office addresses) of the movant and all  
12 other affected parties. *See id.* The affidavit must also provide a certification that, despite personal  
13 consultation and sincere effort to do so, the movant was unable to resolve the matter without court  
14 action. *See, e.g.*, Local Rule 7-4(a)(3). If the circumstances are such that personal consultation is  
15 truly not possible, the movant must provide a detailed explanation why that is the case so the Court  
16 can evaluate whether to exercise its discretion to decide the motion despite the lack of a proper  
17 pre-filing conference. *See id.* Similarly, if no notice whatsoever was provided to the opposing  
18 party regarding the filing of the motion, the affidavit must include a detailed explanation of why  
19 it was not practicable to provide that notice. *See id.* Concurrently with the filing of an emergency  
20 motion, or promptly thereafter, the movant must inform the courtroom administrators of the  
21 assigned judges that the motion was filed. Local Rule 7-4(d).

22 If these technical requirements are not met, the emergency motion may be denied. Local  
23 Rule 7-4(b). If these technical requirements are met, the Court will turn to the substantive  
24 requirements for filing an emergency motion. When a party files a motion on an emergency basis,  
25 it is within the sole discretion of the Court to determine whether any such matter is, in fact, an  
26 emergency. *See Local Rule 7-4(c).* Generally speaking, an emergency motion is properly  
27 presented to the Court only when the movant has shown (1) that it will be irreparably prejudiced  
28 if the Court resolves the motion pursuant to the normal briefing schedule; and (2) that the movant

1 is without fault in creating the crisis that requires emergency relief or, at the very least, that the  
2 crisis occurred because of excusable neglect. *Cardoza*, 141 F. Supp. 3d at 1142 (citing *Mission*  
3 *Power*, 883 F. Supp. at 492). If there is no irreparable prejudice, sufficient justification for  
4 bypassing the default briefing schedule does not exist and the motion may be properly decided on  
5 a non-expedited basis. *Cardoza*, 141 F. Supp. 3d at 1142-43. If there is irreparable prejudice but  
6 the movant created the crisis, the Court may simply deny the relief sought. *Id.* at 1143. The  
7 relevant inquiry is not whether the opposing party was at fault with respect to the underlying  
8 dispute, but rather “it is the creation of the crisis—the necessity for bypassing regular motion  
9 procedures—that requires explanation.” *Mission Power*, 883 F. Supp. at 493. For example, when  
10 an attorney knows of the existence of a dispute and unreasonably delays in bringing that dispute  
11 to the Court’s attention until the eleventh hour, the attorney has created the emergency situation  
12 and the request for relief may be denied outright. *See Cardoza*, 141 F. Supp. 3d at 1143 (collecting  
13 cases). Quite simply, emergency motions “are not intended to save the day for parties who have  
14 failed to present requests when they should have.” *Intermagnetics America*, 101 B.R. at 193; *see also*  
15 Local Rule 7-4(b) (“[The] failure to effectively manage deadlines, discovery, trial, or any  
16 other aspect of litigation does not constitute an emergency”).

17 In this instance, Defendants have not met the technical or substantive requirements for an  
18 emergency motion. Additionally, by waiting two months after filing the exhibits at issue on the  
19 public docket to ask for leave to file them under seal, Defendants convey an absence of urgency.  
20 Such an oversight in a case involving minors, especially in light of Defendants’ inherent  
21 responsibility as overseers of child welfare and safety, troubles the Court. *See cf. Mix v. Jones-*  
22 *Johnson*, 2006 U.S. Dist. LEXIS 65054, at \*2 (D. Nev. Sept. 8, 2006) (finding that Clark County  
23 Department of Family Services, upon removing a child from the custody of his or her parents, “has  
24 the responsibility to provide care, supervision, and services to children...”); *see generally* NRS  
25 432B (governing the protection of children from abuse and neglect and mandating the Clark  
26 County Department of Family Services’ responsibilities).

27 Most concerning to the Court, Defendants ask the Court for leave to file the exhibits at  
28 issue under seal almost two months after the exhibits were filed on the public docket, on May 29,

1 2018. Docket No. 81. “There is thus an inherent logical dilemma underlying the parties’ requests  
2 because information that has already entered the public domain cannot in any meaningful way be  
3 later removed from the public domain.” *TriQuint Semiconductor, Inc. v. Avago Techs. Ltd.*, 2012  
4 U.S. Dist. LEXIS 58227, \*8 (D. Ariz. Apr. 25, 2012) (denying after-the-fact requests to seal  
5 portions of transcript of hearing that was open to the public); *see also Constand v. Cosby*, 833 F.3d  
6 405, 410 (3d Cir. 2016) (“[p]ublic disclosure cannot be undone”); *Protectmarriage.com-Yes on 8*  
7 v. *Bowen*, 752 F.3d 827, 834 (9th Cir. 2014) (“once a fact is widely available to the public, a court  
8 cannot grant ‘effective relief’ to a person seeking to keep that fact a secret”); *Doe No. 1 v. Reed*,  
9 697 F.3d 1235, 1238-40 (9th Cir. 2012) (“[t]his relief is no longer available because the petitions  
10 are now available to the public”); *Gambale v. Deutsche Bank AG*, 377 F.3d 133, 144 & n.11 (2d  
11 Cir. 2004) (“The genie is out of the bottle . . . We have not the means to put the genie back”).  
12 Therefore, while the Court can take protective measures to prevent further harm, it cannot shield  
13 from the public information that has already been disclosed publicly. *See, e.g., Ashcraft v. Welk*  
14 *Resort Group*, 2017 U.S. Dist. LEXIS 148211, at \*6 n.2 (D. Nev. Sept. 13, 2017).

15       Nonetheless, as the Court finds that Defendants have shown compelling reasons to seal the  
16 subject exhibits, and in the interest of the minor children, the Court **GRANTS** Defendants' motion.  
17 Docket No. 90. The Court **INSTRUCTS** the Clerk's Office to seal Docket Nos. 81-1, 81-3, 81-4,  
18 81-5, 81-6, 81-7, and 81-8. The Court **ORDERS** Defendants to file unredacted copies of each  
19 exhibit, under seal, no later than July 24, 2018.

## 20 IT IS SO ORDERED.

21 Dated: July 20, 2018

NANCY J. KOPPE  
United States Magistrate Judge